

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0568**

In the Matter of the Welfare of:
M. S. M., Child.

**Filed January 17, 2023
Affirmed
Bratvold, Judge**

Anoka County District Court
File No. 02-JV-19-944

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant M.S.M.)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent State of Minnesota)

Considered and decided by Reilly, Presiding Judge; Bratvold, Judge; and Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from a delinquency adjudication for third-degree criminal sexual conduct, appellant argues that the evidence is insufficient to prove his guilt. When

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

we view the evidence in a light favorable to the adjudication, as the law requires, we conclude the evidence sustains the finding of guilt. Thus, we affirm.

FACTS

The following summarizes the district court’s written factual findings after a bench trial. Appellant M.S.M. was 16 years old, and A.S. was 17 years old, at the time of the offense, which occurred on November 2, 2018. Before that day, they “had not met or spoken with one another.” In the five months before November 2, M.S.M. and A.S. “had established and carried on a social-media relationship as ‘friends’ through a cell-phone application known as Snapchat.”¹ They “communicated [via Snapchat] about normal teenage subjects,” and “there was some sexting.” A.S. acknowledged that she sent M.S.M. “one topless selfie.”

M.S.M. and A.S. agreed to meet on November 2, and A.S. gave M.S.M. her home address. When M.S.M. arrived at about 6:00 p.m., he parked on the street, A.S. “went out to meet him,” and “they hugged.” They got in M.S.M.’s car, and he “drove the car only a few blocks and parked in a grassy area.”

“They spoke briefly about going out to dinner” before M.S.M. “became sexually aggressive and began touching A.S. in the inner thigh area and kissing her,” leaving a “hickey” on her neck. M.S.M. “removed his pants, grabbed A.S. by the hair and forced her

¹ The district court explained that because messages and photographs sent using Snapchat disappear “within a few seconds of being viewed,” none of the Snapchat communications between A.S. and M.S.M. “were retrieved.”

face down into his lap . . . put[ting] his penis into A.S.'s mouth." "A.S. performed oral sex on [M.S.M.] briefly."

M.S.M. then "climbed into the backseat of the vehicle" and "pulled A.S. into the backseat by her hair." A.S. was wearing a dress. M.S.M. "placed A.S. on his lap and entered her vaginally." After less than a minute, M.S.M. "ejaculated and pushed A.S. off of him." "A.S. got out of the car," and before she "could retrieve her cell phone and charger," M.S.M. "drove away."

A.S. "ran into the home of a nearby trusted neighbor"; she "was panicked and claimed to have been raped." "The neighbors contacted law enforcement and A.S.'s mother." A.S.'s mother took A.S. to the hospital, where she had a "lengthy" examination by a sexual-assault nurse examiner (SANE). A.S. was interviewed by a sheriff's deputy, a detective, and the SANE. A.S. told "consistent" and "similar" stories of a "non-consensual sexual assault" in all three interviews.

M.S.M. "deleted and terminated his Snapchat account" the night of November 2. A.S. did not know M.S.M.'s "true name." When presented with a photo array by an investigator, A.S. "immediately picked out the photo of [M.S.M.] and said she was 100% certain." The investigator then interviewed M.S.M. at his high school. M.S.M. was "polite and cooperative" and admitted to "having oral and vaginal intercourse with A.S. in the car." M.S.M. stated that "he felt religious-based guilt over the encounter and so ended it and left A.S." M.S.M. stated that A.S. left her phone in his car, and he threw it "out the window rather than to go back and return it to her as that meeting would have been awkward."

The state filed a juvenile-delinquency petition charging M.S.M. with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (2018). During the bench trial in February 2020, the state called the following witnesses: A.S.; A.S.’s neighbor; A.S.’s mother; the responding sheriff’s deputy; two detectives; the SANE who saw A.S. in the hospital; and two forensic scientists knowledgeable about the results of physical evidence from A.S.’s sexual-assault examination. The forensic testimony showed that M.S.M. was “a match as the source of the semen found in the vaginal, perineal, cervical and rectal swabs, of the seminal fluid from the oral swab, and of the saliva from the neck swab.” M.S.M. testified in his defense, stating that the November 2 incident was consensual.

After the trial, the district court issued written findings of fact and conclusions of law, determining that M.S.M. was guilty of third-degree criminal sexual conduct because he “penetrated A.S. vaginally and orally and did so with the use of force.” The district court also determined that “A.S. may very well have anticipated that some type of sexual activity would occur with [M.S.M.] when she agreed to the date. But she did not consent to that sexual activity, at that time, and under those circumstances.”

M.S.M. appeals.

DECISION

M.S.M. argues that the evidence is insufficient to support a finding of guilt for third-degree criminal sexual conduct. Appellate courts “use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). “In considering a claim of insufficient evidence, this

court’s review ‘is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,’ is sufficient to allow the fact-finder to reach the verdict that it did.” *In re Welfare of C.J.W.J.*, 699 N.W.2d 328, 334 (Minn. App. 2005) (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)). “The reviewing court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense.” *Id.* (citing *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988)). We “must assume the fact-finder believed the state’s witnesses and disbelieved any evidence to the contrary.” *Id.* (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)).

“A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if . . . the actor uses force or coercion to accomplish the penetration.” Minn. Stat. § 609.344, subd. 1(c). Minn. Stat. § 609.341, subd. 3 (2018), defines force as

the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Bodily harm is defined as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2018).

M.S.M. conceded the element of penetration. Thus, the only issue at trial was whether M.S.M used force or coercion to accomplish the penetration. M.S.M. challenges the district court's determination that he penetrated A.S. by force.

M.S.M.'s brief to this court acknowledges that "a conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Hill*, 172 N.W.2d 406, 407 (Minn. 1969). Still, he argues for reversal because "the state relied wholly on A.S.'s accounts of what occurred," and A.S.'s "accounts were rife with inconsistencies and contradicted by the circumstances leading up to and during the [November 2] incident." The state disagrees, arguing first that corroboration is not required and citing to Minn. Stat. § 609.347, subd. 1 (2018). Second, the state argues that the prosecution "presented a significant amount of corroborating evidence to support A.S.'s testimony at trial" and that A.S. was "consistent" in stating that "she was sexually assaulted by M.S.M." and "consistent in describing how M.S.M. sexually assaulted her" and "intentionally caused [her] pain."

M.S.M. makes three arguments, which we discuss in turn. First, M.S.M. contends *State v. Huss*, 506 N.W.2d 290 (Minn. 1993), supports reversing his conviction. In *Huss*, the supreme court reversed a father's conviction for criminal sexual conduct in the second degree involving his three-year-old daughter. 506 N.W.2d at 293. The court determined "on these unusual facts, that the state did not meet its burden of proof beyond a reasonable doubt." *Id.*

M.S.M. analogizes A.S.'s testimony to what the supreme court described as the "particularly troublesome" testimony of the victim in *Huss*. *Id.* at 292. We are unconvinced

and distinguish *Huss* for three reasons. First, the victim in *Huss* was three years old and “was not able to identify [her father, the alleged abuser,] in the courtroom.” *Id.* In contrast, A.S. was 17 years old at the time of the November 2 incident and “immediately” identified M.S.M. from a photo array with “100% certain[ty].” Second, in *Huss*, the victim’s testimony “was contradictory as to whether any abuse occurred at all.” A.S. testified about a nonconsensual sexual assault during which she repeatedly told M.S.M. “to stop,” and he refused. *Id.* at 292. Third, the victim in *Huss* was exposed to a “highly suggestive book” and accompanying tape about sexual abuse and “first mentioned the abuse” while listening to the tape. *Id.* at 293. Nothing in the record suggests that A.S. was influenced to report M.S.M.’s assault by anything outside the events of November 2. Based on the “unusual facts” of *Huss*, we do not find it analogous. *Id.*

M.S.M. argues, second, that A.S.’s account “changed various times and in key ways” and that the “credibility of A.S.’s testimony at trial was also cast into doubt.” It is well-established that “[o]n matters of credibility and the weight to be given the testimony of witnesses, we defer to the [district] court.” *In re Welfare of J.H.*, 844 N.W.2d 28, 39 (Minn. 2014).

Based on our review of the record evidence and the district court’s written findings, we conclude that the district court considered A.S.’s credibility. The district court determined that A.S. was “not entirely credible” because she “obviously lied to her parents about her plans” with M.S.M. and “understated the extent of the sexualized communications” via Snapchat. The district court also determined that A.S.’s “consistent and similar” statements describing a “non-consensual sexual assault” in response to

“[q]uestioning from law enforcement and a SANE” was a “good test of credibility, especially for a naïve teenager like A.S.” Importantly, the district court considered M.S.M.’s credibility and found him “not credible” based on his “story of having an attack of religious guilt almost at the same moment he ejaculated which prompted him to kick [A.S.] out of the car, drive off leaving her on the side of the road and throw[] away her cell phone.” We therefore defer to the district court’s determination that A.S.’s testimony about the assault was credible.

Third, M.S.M. argues that the record evidence is insufficient to prove force. M.S.M. points out that trial testimony showed that he weighed 120 pounds, and A.S. weighed 196 pounds, at the time of the November 2 incident. M.S.M. relies on this evidence to argue that “[i]t is difficult to conceive” how M.S.M. could have forced A.S. into the backseat to have sex on top of him. We disagree.

A.S. testified as follows: Her sexual encounter with M.S.M. was nonconsensual, and she repeatedly told him “to stop.” M.S.M. “grab[bed her] hair” and “force[d her] to suck his penis.” M.S.M. then “pulled [A.S.] in the back of the car . . . by [her] hair,” and when she “tried to pull back it would hurt.” While they were in the backseat, M.S.M. “put [her] on top of him” and penetrated her. M.S.M. told her, “I want to make you cry.” She was crying “a little” and “wanted it all to stop.” This testimony fully supports the district court’s finding that A.S. did not consent to sex with M.S.M. “at that time, and under those circumstances.”

We observe that Minn. Stat. § 609.347, subd. 1, states that corroboration is not required in criminal-sexual-conduct cases. As a result, A.S.’s testimony alone is sufficient

to sustain the finding of force. Still, testimony from witnesses other than A.S. strongly proves forced penetration. For example, A.S.'s neighbor, A.S.'s mother, and the SANE described A.S.'s demeanor on the night of the assault. "A prompt complaint by a victim is corroborative evidence of a rape," as is "[t]estimony from others about a victim's emotional condition after a sexual assault." *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004), *rev. denied* (Minn. Aug. 17, 2004). A.S.'s neighbor testified that when A.S. arrived, she was "frantic, kind of panicked," "distressed," and "very hysterical" and "told [him] that she had been raped." Similarly, A.S.'s mother testified that when she arrived at the neighbor's house, A.S. "ran up" and "she was crying, . . . 'Mom, I've been raped.'" The SANE also testified that A.S. "appeared withdrawn, but cooperative," "needed some prompting to fully . . . answer the questions to the best of her ability," did not make good eye contact, and let her hair cover her face.

A.S. also made consistent statements describing the forced penetration. The responding sheriff's deputy, the detective who spoke with A.S. at the hospital, and the SANE all testified that A.S. stated M.S.M. pulled her hair to force her into performing oral sex and vaginal intercourse. The SANE also stated that A.S.'s hair "appeared tangled in some areas." Thus, A.S.'s testimony is corroborated by her prompt complaint of rape, her emotional and physical condition following her sexual encounter with M.S.M., and her consistent account of forced penetration across multiple interviews.

Because the record contains ample evidence that M.S.M. penetrated A.S. by force, we determine that the evidence sustains the finding of guilt.

Affirmed.